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Comment

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I AM not quite sure just what the difference is between a commentator and a speaker. Whichever you are, you tend to express your own point of view.

Let me say first that I reject the view that the fair employment laws have failed or that the commissions have failed. While more might have been done, there have been substantial gains.

The test of effectiveness is not to be found in the statistics concerning commission operations but in actual changes in employment practices. I believe that changes have taken place. This, of course, is not a documented conclusion. It is peculiarly difficult to measure quantitatively how many minority group workers have obtained jobs they would not have held twenty years ago. It is even more difficult to determine whether the changes that have occurred are due, directly or indirectly, to anti-bias legislation. Hence, we must rely on observation and guess. My own observations and guesses lead me to believe that the laws have had favorable results.

There are at least two reasons why there is, nevertheless, a feeling of failure. First, more progress could have been made. Second, there are factors at work in our economy, which were reviewed last night, which are rapidly making things worse for minority groups. Apparently, the gains that have been made in the last two decades under the various statutes have not kept up with the losses. That is why we face such an urgent situation today.

Previous speakers have referred to the National Labor Relations Act and noted that the procedural provisions of the various fair employment laws used that act as a model. The procedural similarity between the federal and state labor relations acts on the one hand and the state fair employment laws on the other naturally prompts speculation as to why they operate so differently in practice. Why, for example, is there a tradition of prompt action under the labor relations acts, while proceedings under the anti-bias laws tend to be leisurely? Why do some 10 per cent of the Labor Board cases go to formal hearing and generate a large body of litigation while only a handful of anti-bias cases get beyond the stage of informal investigation?

One reason for this difference is the existence of an organized group that has a direct economic stake in getting action out of the labor boards. The unions, of course, have an ideological sympathy with the objectives of the labor relations statutes, as the civil rights organizations have with the anti-bias laws. However, there is also the simple fact that, if a union wins a Labor Board case, it is in business in the plant. If it loses, it is out. It is that fact that gives the proceedings under the labor laws a sense of urgency from the time the charge or complaint is filed. That sense of urgency is seriously lacking in the work of the anti-bias commissions.

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The week following the day on which a complaint is filed is a critical period. The complainant should have the feeling that, if he goes to the commission office and files a complaint on Monday, by Thursday or Friday at the latest he will know from the commission that it has been in touch with the employer and has received some indication of what the employer's defense is.

When I file a complaint with an anti-bias commission, neither I nor the complainant knows what the employer's response is going to be. It may be a general denial or a frank admission. It may be something totally unexpected, an explanation that we did not in any way anticipate. Thus, one goes down to the commission office with a very real sense of curiosity—"What is going to happen now?" Unfortunately, too often the weeks drag by with no indication to the complainant as to how the case is shaping up.

It does not need to be that way. I know in particular that the New York City Commission, which has enforcement jurisdiction only in housing cases, has set up its procedures so that there is contact with the landlord named in the complaint within a matter of two or three days after the complaint is filed.

This approach runs some risks. Haste always increases the possibility of legal boners that can cause trouble if the case turns out to be a long drawn-out test of strength. But the important thing to remember is that most cases do not turn out that way. A high proportion of the cases, probably as high as 80 or 90 per cent of those with merit, are what might be called "soft touches." These are the cases where the employer (or the owner of housing) is obviously in the wrong. If he sees from the start that the commission means business, he is likely to settle quickly. But you do not get quick settlements unless you have a procedure and an organization geared to quick action.

I might make a parallel with the New Jersey courts where, in 1948, the state Supreme Court imposed a set of strict requirements on the lower court judges. Among other things, they were told that, if any case was not decided within a specified time, a written explanation was to be given to the Chief Justice. One result was that, when we had a case before the New Jersey courts involving discrimination at the Levittown housing development, it was decided by the state Supreme Court only a year and a half after the complaint was filed with the state antidiscrimination agency. Those of you who are lawyers know that that is a very short time for getting a case through the highest court of a state.

I do not believe that time limitations should be written into statutes or even into formal rules and regulations. (They were not in New Jersey.) However, benefits would be obtained by internal, housekeeping regulations requiring reports on all pending cases at regular intervals, including explanations of any proceedings that are not in fact proceeding.

Let me make one more point. Professor Girard suggested that the general acceptance of the fair employment laws that we see today may well be the result of the cautious and studied approach that the commissions have followed

up to now. I agree—except that I am not so sure about that phrase, "general acceptance."

We have heard a great deal of talk recently about the "white backlash." This phenomenon is primarily due to the fact that the effects of the civil rights movement have been felt for the first time by the man in the street. The great bulk of the white people are now facing changes in their own affairs. Integration is no longer an abstract question to be discussed in legislatures. It is no longer a goal to be fought for in distant states. It is a matter of having a Negro family move in next door, of having Negro children in your child's classroom.

This has provoked resistance in a part of the white population that has been silent up to now. They may have been opposed to fair employment, fair housing and other anti-bias legislation but their opposition has only rarely been expressed. Where it has been expressed (for example, to keep Negro families out of all-white neighborhoods), it has often been successful. We now face the prospect of much more frequent and better organized opposition.

The fair employment laws have not provoked such a backlash up to now. This may be because changes in employment patterns do not arouse deep emotions. It seems more likely, however, that it is because there have not been many changes. And this in turn may be due to the cautious approach of the commissions. We can only speculate as to what will happen if and when the tempo of activity under the fair employment laws is increased. We may discover that the "general acceptance" of the statutes that we have welcomed and praised is in fact illusory.

If there is to be a backlash under the fair employment laws, it will be a matter of regret that we did not get it when they were first enacted. In 1945, when the first fair employment laws were adopted in New York and New Jersey, more vigorous and effective enforcement would have provoked resistance, but there is no reason to believe that the resistance would have been unmanageable. All the evidence indicates that changes in employment patterns do not provoke the kind of emotional response that is aroused by changes in schools or housing. If the employment backlash had been stimulated and met between 1945 and 1950 by more extensive action under the fair employment laws, a different pattern would have been set for the administration of anti-bias legislation generally.

Be that as it may, we have to deal with the situation as it exists now. The principal point I want to make is that we should avoid the tendency to resort to cautious administration in a bid for "acceptance" of fair employment and other antidiscrimination laws, at the cost of failing to do the job that needs to be done.